

**REMARKS**

In the Office Action, the Examiner rejected claims 1—2, 6—9, 11—14, 32, 36, 38—39, and 41 under 35 USC 103 as unpatentable over Chiodo (USP 5575130) in view of Harding (USP 5256006). Claims 3—4, 10, 15—16, 17—20, 33—35, 37, 40 and 42 remain withdrawn. Applicants have amended claims 1, 11, 32 and 36. In view of the foregoing amendments, Applicants request reconsideration and withdrawal of the Examiner's rejections and objections.

**Claim Rejections:**

Applicants have carefully reviewed Chiodo and Harding in detail and respectfully submit that neither teach or suggest, alone or in combination, all of the limitations of independent claims 1, 32 and 36 as amended above. Specifically, Chiodo and Harding fail to teach or suggest:

wherein the vertical legs of the hammer cap being operably couplable with the vertical tabs of the stake member wherein the striking surface member is maintained in spaced relation with the stake member

as claimed in claim 1;

the first and second legs of the cap being operably coupled to the first and second arms of the stake wherein the strike surface member remains in spaced relation with the stake member

as claimed in claim 32; and

the vertical walls of the hammer cap being couplable with the vertical tabs of the upper region wherein the strike surface member is maintained in spaced relation to the upper region

as claimed in claim 36.

As the examiner notes, Chiodo does not teach a stake and hammer cap system. The cap relied on in Harding to meet the claim limitation sits on the board or stake such that there is no teaching of a gap between the striking member and stake or other item being hammer into place. Here, the hammer cap or cap's strike surface member is maintained in space relation with the

stake such that there is a gap between the strike surface member and the stake.

Furthermore, the combination of Chiodo and Harding teach an enclosed channel and not an open-ended channel which would allow an edging board to extend out of the open ends. Moreover, Harding effectively teaches away from these limitations and, thus, can not be used to establish a *prima facie* case of obviousness.

As illustrated in the application, the purpose of this limitation is as follows:

The height  $H_K$  of the trough 130 plus the height  $H_F$  of the channel 50 is dimensioned such that an upper end 230 of the edging board 200 tends not to contact an upper end 132 of the trough 130. That is the height  $H_J$  of the edging board channel 90 is preferably greater than the height  $H_M$  of the edging board 200." Therefore, the upper end 230 of the edging board 200 tends not to contact the upper end 132 of the trough 130 of the hammer cap 100. The hammer cap tends to prevent the force used to drive the stake into the ground from being transferred to the edging board. This allows the user to apply downward force to the hammer cap 100 without damaging the edging board 200. As with the dimensions of the upper region of the stake, the dimensions of the hammer cap 100 may be varied to accommodate varying sizes of edging boards 200. page 11, lines 3—12,

Accordingly, Applicants submit that claims 1, 32, and 36, as well as claims 2, 5—9, 11—14, 38—39, and 41 by virtue of their dependence on claims 1 and 36, meet the requirements for patentability under 35 USC 103. Applicants further submit that claims 1, 32 and 36 are generic to unelected species and that withdrawn dependent claims 3—4, 10, 15—16, 33—35, 37, 40 and 42 are allowable as well.

**Conclusion**

The Applicant's respectfully submit that claims 1—16, 32—35, and 36—42 are in condition for allowance. Accordingly, reconsideration and allowance of the application is requested. If the Examiner has any questions or comments, the Examiner is invited to call the undersigned at (949) 567-6700.

Respectfully submitted,

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